



MINUTES

Sexual and Other Criminal Offenses, Criminal Penalties, and Sentencing Practices Study Committee

October 26, 2005

MEMBERS PRESENT:

Senator Keith Kreiman,
Co-chairperson
Senator Jeff Angelo
Senator Dick Dearden
Senator Robert Dvorsky
Senator Pat Ward

Representative Lance Horbach,
Co-chairperson
Representative Joe Hutter
Representative Rick Olson
Representative Kurt Swaim
Representative Jim Van Fossen

MEETING IN BRIEF

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- I. Procedural Business.
- II. Introductory Comments.
- III. Mr. Steve Conlon, Assistant Director, Division of Criminal Investigation.
- IV. Ms. Phyllis Blood, Research Analyst, Criminal and Juvenile Justice Planning.
- V. Mr. Joe McEniry, Legal Counsel, Legislative Services Agency, Legal Division.
- VI. Ms. Lois Osborne, Fifth Judicial Department of Correctional Services.
- VII. Ms. Ellen Baker, Probation and Parole Officer, Second Judicial District.
- VIII. Mr. Tom Ferguson, Black Hawk County Attorney, and Ms. Jennifer Miller, Marshall County Attorney.
- IX. Public Comments.
- X. Materials Filed With the Legislative Services Agency.



Sexual and Other Criminal Offenses, Criminal Penalties, and Sentencing Practices Study Committee

I. Procedural Business.

Call to Order. Temporary Co-chairperson Horbach called the meeting to order at 10:06 a.m. on Wednesday, October 26, 2005, in Room 22 of the State Capitol.

Adoption of Rules. Members of the Committee adopted rules which are available, upon request, from the Legislative Services Agency.

Election of Permanent Co-chairpersons. Upon motion of Representative Hutter, members of the Committee elected temporary Co-chairpersons Horbach, Kreiman, and McKibben as permanent Co-chairpersons.

Adjournment and Next Meeting. The Committee adjourned at 3:06 p.m. The Committee will reconvene on Wednesday, November 30, at 10:00 a.m. in Room 116 of the State Capitol.

II. Introductory Comments.

Co-Chairperson Horbach stated that although the charge of the Committee is broad, the Committee will focus on sex offender residency restrictions and the legislation passed in the 2005 Legislative Session, as well as the electronic monitoring of sex offenders. He further stated that there is a need to redefine or affirm the definition of who a sex offender is, as the perception of who a sex offender is does not always match reality.

Co-chairperson Kreiman commented that it is important to look at what the General Assembly passed to make sure the means are in place to protect Iowa's children and communities. He urged the Committee to listen closely to the testimony that will be presented to determine whether changes need to be made to cover loopholes in the law, including schools and day care centers that have started up since 2002, sex offenders taking pictures on school grounds, and sex offenders who volunteer in school.

Senator Angelo remarked that he attended a nationwide conference on this topic and he is concerned with the fact that sex offenders continue to have access to children. He also queried whether the issue of instituting the death penalty in heinous sex crimes involving children should be reexamined in future discussions.

Senator Dvorsky stated that the discussion should include representatives from the community including the school system and social service agencies such as the Department of Human Services and Court Appointed Special Advocates (CASA).

Representative Hutter commented that it is important to include the victims in the discussion.

Representative Swaim stated that it is not only important to be tough on crime but to be smart on crime as well. He stated that the laws are not protecting communities enough and that resources must be focused where they would do the most good. He also stated he would like the Committee to consider a complete revision of the Iowa Criminal Code.



Representative Olson stated that money should be spent on preventing crime, not always just on prosecuting crimes. He also emphasized that victims of crime need to be heard from.

III. Mr. Steve Conlon, Assistant Director, Division of Criminal Investigation.

Registry Status. Mr. Steve Conlon appeared before the Committee and gave a brief overview of the Sex Offender Registry program in Iowa. He stated that there are currently 6,019 persons on the Sex Offender Registry and the registry is averaging 500-600 address changes per month. He stated that his division is working closely with the Department of Administrative Services to make changes to the Sex Offender Registry Internet site to improve user accessibility and functionality, including implementing an upgraded server and a list serve service, utilizing census bureau data, and identifying the risk level of offenders. He reported that as of July, 696 registrants were removed from the Sex Offender Registry as such offenders have met their 10-year registry requirement and an additional 96 sex offenders were removed from the registry over the last three months (August through October). He further commented that he is involved in the Sex Offender Treatment and Supervision Task Force along with Co-chairperson Kreiman and Representative Hutter. He stated the proposed federal sex offender legislation may impact Iowa's sex offender laws and that his office is closely monitoring federal activity on this issue.

Discussion. Committee questions focused on tracking measures in place to monitor sex offenders. Mr. Conlon stated that tracking sex offenders is problematic. He stated that the federal proposal requires a registrant to report to law enforcement periodically, but it depends on the risk assessment the registrant has received. Representative Swaim asked how out-of-state sex offenders who move into Iowa are tracked and Mr. Conlon responded that such persons are often transient and lack a permanent address and they are encouraged to register at or near an address where they frequently sleep.

IV. Ms. Phyllis Blood, Research Analyst, Criminal and Juvenile Justice Planning.

Task Force Update. Ms. Phyllis Blood provided information on the Sex Offender Treatment and Supervision Task Force, a committee established by the Criminal and Juvenile Justice Planning Division in the Department of Human Rights in H.F. 619 to study and make recommendations for treating and supervising sex offenders in correctional institutions and in the community. She stated the task force formed five subcommittees to study the following issues: the effectiveness of electronic monitoring, the potential effects and costs associated with special sentences created in the legislation, risk assessment models created for sex offenders, effective treatment options for sex offenders, and the integration of state government databases for the purpose of updating addresses of persons on the Sex Offender Registry. She stated the two tasks of the task force are to identify any critical issues that need to be addressed and to determine the best way to complete the work.



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Discussion. Committee discussion focused on what the task force can do to enhance the work of this Committee. Committee members commented that the task force can encourage and empower the state to do a better job of protecting communities and children. Ms. Blood responded she would put this item on the agenda for the task force's next meeting. Co-chairperson Horbach suggested that since both groups may be discussing similar issues, it would be a good idea to blend the work of both groups.

V. Mr. Joe McEniry, Legal Counsel, Legislative Services Agency, Senior Legal Division.

State Sex Offender Registry Laws. Mr. Joe McEniry provided a brief overview of other state's Sex Offender Registry laws. He stated that 15-18 states have passed such laws and highlighted certain features of such laws passed in Alabama, Illinois, Florida, and Washington. He stated that Alabama law is somewhat similar to the Iowa 2,000-foot residency law, but further restricts a sex offender from seeking employment within 2,000 feet from a school or day care and prohibits a sex offender from residing within 1,000 feet of their victim; Illinois law prohibits a sex offender from being present at or loitering near a school unless the sex offender is a parent or a guardian or has permission to be on school grounds; Florida law prohibits a sex offender from living within 1,000 feet of a school, day care center, park, playground, or other place where children regularly congregate; and Washington law permits the Department of Corrections to determine where a sex offender resides based upon an assessment of public safety risks, including a process by which victims, witnesses, and other interested persons provide information and comments.

Discussion. Committee members asked whether the Iowa Department of Corrections (DOC) can place further restrictions on a sex offender's residence than the law provides and Mr. McEniry responded that further restrictions can be included as a condition of probation. Co-chairperson Horbach asked Mr. McEniry to keep track of whether other states are looking at laws similar to Megan's Law, a federal law that requires local law enforcement agencies to notify schools, day care centers, and parents about the presence of sex offenders in their area.

VI. Ms. Lois Osborne, Fifth Judicial Department of Correctional Services.

Electronic Monitoring. Ms. Lois Osborne stated she is in charge of electronic monitoring for the state of all offenders, not just sex offenders. She has worked with electronic monitoring for over 15 years and commented it is a very effective tool for law enforcement. She stated that the type of electronic monitoring that is assigned to sex offenders is determined by a sex offender's risk assessment factors, willingness to undergo treatment, and polygraph test scores. She presented information relating to the following six types of electronic monitoring systems used by the state: a voice verification system that costs \$1.88 per unit per day, a radio frequency unit that includes an ankle bracelet to be worn by the offender that costs



\$2.87 per unit per day and that is used most often on high-risk offenders, a video display/breath alcohol test unit that is used on high-risk offenders with a history of alcohol abuse that costs \$4 per unit per day, a video display/breath alcohol test/radio frequency unit that has a higher level of monitoring and that costs \$6 per unit per day, a global positioning satellite (GPS) unit used for high-risk offenders that can download monitoring information four times per day and that costs \$4.75 per unit per day, and a cellular GPS unit that can provide immediate real time tracking information that costs \$7.25 per unit per day.

The Committee raised questions about real time tracking of sex offenders. Ms. Osborn stated that currently none of the sex offenders are being monitored using a GPS unit that is a real time electronic system because none of the offenders' risk assessments qualified them for that level of electronic monitoring. She emphasized that the GPS unit is leased and the cost per day includes the cost of personnel employed to monitor the system. She stated her department has never looked into purchasing monitors rather than leasing them.

Other Technology Questions. The Committee recognized Ms. Lettie Prell from the DOC for further questions concerning electronic monitoring. Ms. Prell stated that the DOC and case managers determine the type of electronic monitoring system. In response to Representative Swaim's question about the impact of H.F. 619 on the monitoring of sex offenders, Ms. Prell responded that prior to the new law, 60 sex offenders were on electronic monitoring systems of some type, and after the new law, 308 sex offenders are being electronically monitored (as of October 24). She further noted that 40 offenders were placed on a monitoring system in the past week. Senator Ward asked whether there is any system currently in place that notifies law enforcement when a sex offender is near or at a child's home. Ms. Prell responded there is no technology of that type.

Co-chairperson Kreiman asked what the rates of reoffending are for sex offenders who are on some type of electronic monitoring. He also asked about the type of monitoring system the offenders are on when they reoffend. Ms. Prell responded that because of the small number of offenders who had been electronically monitored prior to the new law, there has not been a sufficient amount of time to assess this. Co-chairperson Kreiman opined that it might be a good idea to conduct a study to assess how the electronic monitoring impacts the reoffending issue.

VII. Ms. Ellen Baker, Probation and Parole Officer, Second Judicial District.

Experience With New Law. Ms. Ellen Baker stated she has had work experience with both juvenile and adult sex offenders and their treatment programs. She stated that the 2,000-foot residency restriction and the new laws in H.F. 619 have increased her caseload. She further stated that a great deal of her time is spent helping sex offenders determine where they can lawfully live rather than facilitating specific treatment programs for them. She commented that most offenders do not have the financial resources to move wherever they



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want, in order to comply with the residency restriction, and that many offenders end up living in rural communities, isolated from their families and fearful of getting involved in their new communities. She stated that many offenders feel anxious and stressed by such situations, which can lead offenders to reoffend.

Discussion. In response to Committee questions about the impact of H.F. 619 on how sex offenders are monitored, Ms. Baker responded that prior to the enactment of the law, sex offenders who did not comply with the terms of their probation were placed on a monitoring system as a part of their treatment plan. Currently, all offenders are placed on a monitoring system once on probation and the monitoring system has nothing to do with the specific treatment plan for an offender. She added that the determination of where an offender would live was made by a treatment team prior to the new law, but that now the residency determination is much more restrictive and limited. She further suggested that the law be modified to allow treatment providers and probation officers the opportunity to make the decision about where a sex offender should live. Co-chairperson Kreiman commented that he is not sympathetic to the concern that sex offenders have a difficult time finding places to live or that many offenders end up isolated from their families and communities. In response to Ms. Baker's statement that less than 10 percent of her clients have reoffended, Senator Angelo asked what tools she employs to stop an offender from reoffending if treatment is not working. She stated she can file a probation violation report with the court and the court may place the offender back in jail or send the offender to a halfway house.

VIII. Mr. Tom Ferguson, Black Hawk County Attorney, and Ms. Jennifer Miller, Marshall County Attorney.

Black Hawk County. Mr. Tom Ferguson presented an overview of H.F. 619 as enacted and expressed the concern that certain language in the law is unclear and has resulted in nonuniform application by much of the law enforcement community. Some of his concerns included that the statute does not specify whether it applies to all sex offenders or just sex offenders who have committed a crime against a minor, that the law may not apply to juvenile offenders, and it may not apply to schools constructed after July 1, 2002. He further stated the law does not specify how the 2,000-foot measurement is to be determined, fails to provide for enhanced penalties for second or subsequent offenses, and fails to specify whether an aggravated offense under the law requires a lifetime or a 10-year registration period.

Marshall County. Ms. Jennifer Miller also expressed concerns with the 2,000 feet law, including the concern that the law fails to prevent a sex offender from loitering in areas where children congregate, such as public parks and ball fields; fails to place restrictions on where a sex offender can work; fails to include apartment buildings in the residency restriction; fails to consider where an offender lives in relation to the offender's victim; and fails to include penalty enhancements for subsequent offenses. She also commented on



certain unintended consequences of the law, including encouraging offenders not to register, to violate probation, and to live in their cars. She also expressed concern about the lack of adequate protection in place for victims who suffer sexual abuse by family members or acquaintances, the lack of uniformity in tracking offenders and enforcing and prosecuting the law, and the isolation and stress experienced by many offenders who are forced to live away from their families and communities as high-risk factors which may lead them to commit more crimes of a similar nature. She stated that the law should be changed to focus on offenders who are a threat to young children.

IX. Public Comments.

The following persons gave testimony concerning the Sex Offender Registry and sexual abuse-related laws:

- **Mr. Bert Aunan, Legislative Liason, Iowa Judicial Branch.** Mr. Bert Aunan stated the judicial branch does not have any specific policies concerning H.F. 619. He stated that the issues are being raised concerning the juvenile court system and the new sex abuse laws.
- **Mr. Dave Spencer, Rare Pearl.** Mr. Dave Spencer expressed the view that the more restrictions that are placed on a sex offender, the more likely the sex offender will reoffend. He further provided information to the Committee concerning a recidivism study that indicated that over 80 percent of new sex offenses were committed by offenders with no prior sexual offense history.
- **Ms. Lorelei Heisinger, Lobbyist, Iowa Coalition Against Sexual Assault (ICASA).** Ms. Lorelei Heisinger thanked the General Assembly for the additional protections provided to victims in H.F. 619.
- **Mr. J. Dean Keegan, Iowa Trial Lawyers Association (ITLA).** Mr. J. Dean Keegan commented that he serves as the Criminal Law Section Chair of the ITLA and he expressed concern with the fact there is no knowledge element in the 2,000 feet law.
- **Ms. Susan Cameron, Iowa State Sheriffs and Deputies Association.** Ms. Susan Cameron stated her association supports the concerns raised by Mr. Ferguson and Ms. Miller and the establishment of safe zones for children.
- **Ms. Susan Fox, concerned citizen and sister of a registered sex offender.** Ms. Susan Fox stated that her brother is on the Sex Offender Registry and that her family has undergone a difficult time because of the 2,000-foot residency restriction. She stated her brother not have the means to find employment other than a minimum-wage job and lengthy transportation for any job is difficult.
- **Ms. Erin Wilson and Ms. Shannon Kreiman.** Ms. Erin Wilson and Ms. Shannon Kreiman spoke and expressed concerns about what is being done to protect the adult population in Iowa from sex offenders as there is not a 2,000-foot residency restriction protection for adults.



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X. Materials Filed With the Legislative Services Agency.

The items listed below were distributed to Committee members at or in connection with the October 26 meeting and are filed with the Legislative Services Agency. The materials can be accessed via the "Additional Information" link on the Committee's Internet page at: <http://www.legis.state.ia.us/aspx/Committees/Committee.aspx?id=77>.

1. 10/26/2005 — Background Statement and Attachments.
2. 10/26/2005 — Handout Summarizing Electronic Monitoring Systems.
3. 10/26/2005 — Juvenile Sexual Offense Recidivism Risk Assessment Tool.
4. 10/26/2005 — Location of Sex Crimes Prepared by Department of Public Safety.
5. 10/26/2005 — Presentation by Mr. Tom Ferguson on Residency Restriction Statute.
6. 10/26/2005 — Sexual Offender Registry — Status.
7. 10/26/2005 — Sexual Offenders on Electronic Monitoring.
8. 10/26/2005 — Testimonial from Mr. Dave Spencer from Rare Pearl.
9. 10/26/2005 — Testimonial from Ms. Susan Fox.

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